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10/021,200	12/07/2001	Howard Allen Colvin	DN2000251	9470
7590 03/09/2006			EXAMINER	
The Goodyear Tire & Rubber Company Patent & Trademark Department - D/823 1144 East Market Street Akron, OH 44316-0001			NUTTER, NATHAN M	
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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/021,200
Filing Date: December 07, 2001
Appellant(s): COLVIN ET AL.

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Alvin T. Rockhill
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 22 November 2004 appealing from the Office action mailed 22 June 2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,075,084	MABRY et al	6-2000
6,417,246	JIA et al	9-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The rejection of claim 1 under 35 U.S.C. 102(a), as set forth in the Office Action of 22 June 2004, is hereby expressly withdrawn.

Claims 1, 3-7 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mabry et al (US 6,075,084) in view of Jia et al (US 6,417,246).

The reference to Mabry et al describes elastomer composite blends and the method of manufacture. Suitable elastomer latex fluids include natural and synthetic elastomer latices and latex blends. Styrene-butadiene rubber is disclosed as one of the suitable latices at column 11 (line 50) to column 12 (line 27). Fumed silica and precipitated silica are disclosed as suitable fillers therefor at column 14 (lines 6-14). They are taught to possess an aspect ratio of less than 40 at column 15 (lines 47-50).

Mabry fails to suggest the (claimed) dimensions of the silica except that the silica may be fumed silica or precipitated silica at column 14 (line 9). Mabry discloses at column 15 (lines 48-60) that fillers, including silica, typically have an aspect ratio of less than 40.

The reference to Jia et al discloses dental composite materials comprising polymers and filler, such as colloidal silica (Abstract). The silica disclosed has the largest dimension or diameter of 10-100 nanometers. A suitable silica is SNOTEX-PS at

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column 3 (lines 43-45 and line 51). SNOTEX is the same silica which is used in the instant invention. See the Specification at page 10 (lines 24-28).

It would have been obvious to use the SNOTEX silica of Jia et al in the elastomer blend composite of Mabry et al to enhance dispersibility and to improve resistance to fracture. Therefore it is reasonable to infer that the silica of Jia et al satisfies the limitations of the silica as recited in instant claim 1.

(10) Response to Argument

On page 4 of the Appeal Brief, appellants' argument that "Mabry et al do not disclose any necessity or preference for using elongated silica" is not persuasive since the examiner has set forth what success or advantage can be expected from using elongated silica. Appellants' assertion that "the use of elongated silica resulted in superior reinforcement was an unexpected discovery" is not agreed with since it is evident from prior art, that there was nothing that was unexpected.

Appellants' argument that "Jia uses polymerizable resins for dental compositions and therefore the teachings of Jia are not applicable to rubber compositions" is not persuasive since Jia, though not precisely the same art area as that of Mabry et al, helps to solve the problem faced by Mabry viz. how to enhance reinforcement and which type of silica should be useful. Here it is immaterial whether the resins are polymerizable or not since all resins do polymerize ultimately. If the silica of Jia et al works well with a polymerizable resin it is reasonable to assume that, it should work equally well with rubber, unless proved otherwise.

The reference to Jia et al at column 5 (lines 20-23) does point out that elongated colloidal silica performs much better than the spherical colloidal silica.

Claims 1, 3-7 and 15 are therefore prima facie obvious.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Nathan M. Nutter

Primary Examiner



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Conferees:


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